

The Honorable John C. Coughenour

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

KING COUNTY, a Washington municipal  
corporation,

Plaintiff,

v.

ALEX M. AZAR II, in his official capacity  
as SECRETARY, U.S. DEPARTMENT OF  
HEALTH AND HUMAN SERVICES; and  
the U.S. DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Defendants.

No. 2:18-cv-00242-JCC

**DECLARATION OF  
ANDREA GERBER IN SUPPORT OF  
PLAINTIFF'S MOTIONS FOR  
PRELIMINARY INJUNCTION AND  
SUMMARY JUDGMENT**

I, Andrea Gerber, am competent to testify and I have personal knowledge of the matters  
herein:

1. I am a Health Educator with the Family Planning Program at the Public Health  
Department of King County. I hold a Master of Science in Education from the Human Sexuality  
Education Program of the University of Pennsylvania and I have worked for Public Health for 24  
years.

2. I also serve as the Project Director for our research project -- the Rigorous  
Evaluation of High School FLASH -- that is funded by a grant from the Office of Adolescent  
Health ("OAH") of the U.S. Department of Health and Human Services. That grant is the

DECLARATION OF  
ANDREA GERBER - 1  
NO. 2:18-CV-00242-JCC - 1

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1 subject of this lawsuit. I am responsible for overseeing the FLASH project, which includes  
2 ensuring that we meet project goals and objectives, planning project timelines, monitoring  
3 program implementation, and serving as primary liaison to our OAH Program Officer.

4 3. The Family Planning Program first developed a science-based sexual health  
5 education curriculum over 30 years ago known as Family Life and Sexual Health, or FLASH, to  
6 help decrease the teen pregnancy rate in King County and beyond.

7 4. High School FLASH is a 15-lesson curriculum aligned with health standards  
8 published by the Centers for Disease Control. FLASH prepares students to abstain from sex, use  
9 condoms and birth control when they do have sex, confirm consent before engaging in sexual  
10 activity, communicate with their families about sexual health, and seek medical attention in order  
11 to take care of their reproductive health.

12 5. FLASH has received national acclaim. In the last 3 years, the County has  
13 provided more than 6,000 copies of FLASH to school districts across the country, and teachers in  
14 44 states have taught the curriculum. In 2016, the Washington State Public Health Association  
15 awarded the FLASH developers with the Public Health Excellence Award for outstanding  
16 professional performance and for meeting the specific needs of public schools and underserved  
17 youth.

18 6. In early 2015, OAH solicited proposals and offered grant funding as part of its  
19 Teen Pregnancy Prevention Program for five-year research studies on innovative approaches to  
20 preventing teen pregnancy.

21 7. We proposed to OAH that we would conduct a five-year study of High School  
22 FLASH, in what was to be the first-ever scientifically rigorous evaluation of the curriculum.  
23 FLASH is presently taught in every school district in King County. Collectively, these  
24

1 communities have seen a 63% reduction in the teen birth rate since 2008. King County now has  
2 its lowest teen birth rate on record – 2 ½ times lower than the national teen birth rate. However,  
3 we do not know with certainty how the FLASH curriculum contributed to the decline in our teen  
4 birth rate, so we proposed a research project that would thoroughly evaluate the curriculum’s  
5 efficacy.

6 8. OAH agreed with our proposal and on June 29, 2015 awarded King County a  
7 competitive \$5 million, Tier 2B grant. A true and correct copy of this notice of award is attached  
8 as Exhibit A.

9 9. On July 6, 2015, King County received a letter of congratulations from OAH  
10 Director Evelyn Kappeler, stating that the office was looking “forward to working with [us] over  
11 the next five years to support [our] project and ensure [our] continued success.” A true and  
12 correct copy of the letter is attached as Exhibit B.

13 10. After submitting a non-competing continuation application, the County received a  
14 second award of \$1 million for year two, as well as \$360,948 in carry over funding. A true and  
15 correct copy of these notices of award are attached as Exhibits C and D.

16 11. The County is now in the process of conducting this five-year randomized control  
17 study of the efficacy of High School FLASH in 20 schools located in areas in Minnesota and  
18 Georgia that have high teen pregnancy rates and that lack adequate sexual and reproductive  
19 health education.

20 12. Relying on OAH’s funding, in years 1 to 3, as proposed, we recruited 20 schools  
21 in Minnesota and Georgia as participants and gathered parental consent for every student. For  
22 agreeing to participate, each of the schools was promised the High School FLASH curriculum  
23 for each of their teachers; in-person teacher training by myself or another King County health  
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1 education specialist; and an annual stipend of \$2,600. And each student was to receive a modest  
2 incentive such as a gift card to participate. We also provided baseline surveys to all participating  
3 students, and then provided each with either FLASH or a comparison curriculum. We then  
4 provided 3-month follow-up surveys in both Minnesota and Georgia, and 12-month follow-up  
5 surveys to Minnesota schools. (We could only provide 3-month surveys to Georgia schools due  
6 to the sequencing of the study.)

7 13. We were supposed to spend years 4 and 5 conducting the necessary follow-up  
8 surveys in Georgia, and then analyzing all of the collected data to evaluate the long-term efficacy  
9 of FLASH. Our planned work in years 4 and 5 was to be the culmination of this research  
10 project. The analysis would have scientifically demonstrated how FLASH influences the student  
11 behaviors that impact teen pregnancy, including initiation of sexual intercourse, use of  
12 contraceptives, STD testing, and family communication regarding sexual health. However, in  
13 July 2017, OAH unexpectedly terminated the grant two years early, effective as of June 30,  
14 2018.

15 14. OAH's termination of years four and five of grant funding will force King County  
16 to abandon the study midstream. Without this funding, the County will be unable to collect the  
17 final 12-month follow-up data in Georgia. We will also be unable to analyze the data already  
18 amassed to produce an assessment of High School FLASH that is scientifically valid and useful,  
19 both locally and nationally, because of insufficient sample size due to the lack of follow-up data  
20 for Georgia students. Additionally, the high schools in Minnesota and Georgia, which together  
21 serve more than 20,000 students at high risk for teen pregnancy, will not receive the promised  
22 detailed survey results that would help them better understand the state of their students' sexual  
23 health and tailor the FLASH curriculum or other teen pregnancy prevention programs to address  
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1 particular issues faced by their students. And due to the sequencing of the study, the schools in  
2 Georgia will not receive either the High School FLASH curriculum promised for each  
3 participating teacher (a \$2,000 value) or the in-person training by County experts (an \$11,000  
4 value), which would have enabled these districts to provide high-quality sexual health education  
5 going forward in an effort to lower their local teen pregnancy rates and improve graduation rates  
6 and the health outcomes of their students. The Georgia schools, which are chronically and  
7 significantly underfunded, will also be deprived of \$26,000 in stipend monies and their students  
8 likewise will not receive approximately \$15,400 in incentive gift cards.

9 15. In its reviews, OAH has repeatedly praised King County for the FLASH  
10 curriculum itself, the quality of the study design, and our progress conducting the study. The  
11 County has met or exceeded every major project milestone and received every OAH approval  
12 necessary for continuing this research. To the extent that OAH's reviews included minor  
13 recommendations for improvements moving forward, King County fully and immediately  
14 addressed them. OAH even recruited and selected King County to present a workshop for other  
15 grantees at the 2016 National HHS Teen Pregnancy Prevention Grantee Conference. True and  
16 correct copies of OAH's reviews are attached as Exhibits E, F, G, H, and I.

17 16. King County also complied with all OAH program requirements throughout the  
18 grant.

19 17. After conferring with career staff at OAH regarding the trajectory of the FLASH  
20 study, we submitted a non-competing continuation application for the third year of the grant in  
21 April 2017.

22 18. In a May 2017 review of that continuation application, OAH commended the  
23 County's workplan for "address[ing] all of the OAH expectations for Tier 2B grantees, including  
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1 rigorous evaluation of the intervention, collection of performance measures,  
2 packaging/dissemination of the intervention, health care linkages, and implementation of the  
3 intervention in safe and supportive, inclusive environments using a trauma-informed approach.”

4 Exhibit I.

5 19. Although OAH’s original funding solicitation for the grant and its subsequent  
6 notices of award stated that the project period was for five years—from July 1, 2015 through  
7 June 30, 2020—OAH informed King County on July 6, 2017 that it was terminating the project  
8 two years early, on June 30, 2018. OAH’s July 2017 notice stated, “This award also shortens the  
9 project period to end on June 30, 2018 at the end of this budget year.” OAH provided us with  
10 this notice only a few weeks after having commended King County for our progress on the  
11 study. A true and correct copy of this notice of award is attached as Exhibit J.

12 20. OAH has never suggested that it terminated the grant for “cause,” or that the  
13 County consented to early termination. In fact, OAH has not provided King County with any  
14 explanation.

15 21. OAH has continued to praise our study, even after terminating our grant. In an  
16 October 16, 2017 review, OAH wrote that the County “continues to do an outstanding job  
17 building, leveraging, and maintaining its partnerships in all study communities.” Exhibit H.  
18 And on February 12, 2018, OAH staff commended King County for its work in rural areas under  
19 the grant and recommended that we share our successful strategies with the field.

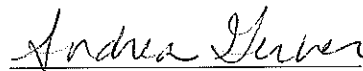
20 22. In advance of receiving each year of grant funding, OAH required King County to  
21 submit a non-competing continuation application. For the second and third grant years, our  
22 applications were due on April 4. For the fourth grant year, the County’s application would  
23 likewise be due in April 2018.

1           23.     King County has not been able to secure alternative funding to replace the funds  
2 cancelled by OAH, despite significant effort on our part. We have spent many hours researching  
3 and contacting various funders in an effort to continue this important study.

4           24.     For the study to proceed, the follow-up survey of the Georgia students must begin  
5 by the 12-month mark, in September 2018, to match the timing of the follow-up data already  
6 collected for the Minnesota students. If the County does not receive funding by August 1, 2018,  
7 it will not be able to hire the necessary staff or make the other required preparations to collect the  
8 follow-up data on the Georgia students at this interval, rendering previously collected data  
9 useless. Three years and \$3 million dollars of work will be lost, with no study results to show  
10 for these efforts.

11           I declare under penalty of perjury that the foregoing is true and correct.

12  
13           Executed March 28, 2018 in Seattle, Washington.

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17             
18           Andrea Gerber

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of March, 2018, I electronically filed the foregoing document with the Clerk of the United States District Court using the CM/ECF system which will send notification of such filing to all parties who are registered with the CM/ECF system. DATED this 29th day of March, 2018.

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s/Tricia O'Konek

Tricia O'Konek